

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-27128
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on August 26, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On February 6, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 7, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 7, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's doctor restricted him to doing light work with normal grip strength. (Page 38) The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of light work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a skilled/semi-skilled work history, MA-P is denied using Vocational Rule 202.07 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on August 26, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted on August 26, 2009 and on September 2, 2009.

(8) On September 2, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The newly submitted evidence does not significantly or materially alter the previous recommended decision. The claimant's impairments

do not meet/equal the intent or severity of a Social Security listing. The medical evidence does not significantly materially alter the previous recommended decision. The medical evidence of record indicates that the claimant retains the capacity to perform light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide.

(9) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 168 pounds. Claimant is a high school graduate and attended one semester of community college. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked December 2008 working security. Claimant also has worked construction and remodeling and has worked in maintenance. Claimant received worker's compensation from 2003-2008 and took a settlement.

(11) Claimant alleges as disabling impairments: carpal tunnel syndrome, migraine headaches, depression, a ruptured disc in his lower back, restless leg syndrome, hypertension, bipolar disorder, anxiety, and lack of sleep.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since December 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a MRI of the lumbar spine showed a disc protrusion at the L4-S1. (p. 40) Post laminectomy with discectomy physical examination reported range of motion of the left hip flexion; the leg ankle was 4/5. He ambulated without assistance. (pp. 37-38) In his mental status the claimant's affect was restricted. He denied acute psychotic features. He was oriented x3. (p. 26) He had no mental limitations. (p. 38)

The claimant provided a list of medications he was currently taking. A MRI of the brain done in [REDACTED] was normal. The mental evaluation noted that his affect was slightly restricted. His speech was clear and coherent. His concentration was fair. He was oriented x3. A psychological medical reported dated [REDACTED] indicates that claimant lives by himself. He arrived to his appointment early and his nephew brought him. He drives only when he has to due to his medication. The claimant was 6' 1" and weighed 178 pounds. He has lost 10 pounds in the

past month. His posture was stiff, his gait was normal. The claimant's clothing was neat and clean. He was soft spoken and somewhat guarded in his answers. The claimant seemed to have a slight stutter possibly due to anxiety. He seemed depressed and anxious. His hygiene was good. He appeared to have good contact with reality and insight into his problems. The claimant described his self esteem as pretty low and his motivation as I have motivation but I can't do things. I want to do stuff, but I can't. The claimant's thought pattern was logical and goal directed. He was talkative and sometimes he elaborated his answers beyond what was required. The claimant denied any suicidal ideation or homicidal ideation. The claimant stated his mood was low and he's worried about his future. Affect was appropriate to his state of mind. He exhibited a depressed/anxious affect. In his memory he could remember five numbers forward and three backward. The claimant remembered one out of three objects out of a three minute delay. He named past presidents as Bush, Carter, and Reagan. He named his birth date as [REDACTED]. He named five large cities as Flint, Detroit, Toronto, Miami, and Houston. He named famous people as George Clooney and Brittany Spears. He stated that current events were the high gas prices. His calculations were $5 \times 5 = 25$, $8 \times 7 = 56$, $9 + 8 = 17$, and $12 - 7 = 5$. 100 subtracting 7's were 93, 64, 57, 50, 43, 36, 29, 22, 15, 8, and 1. The claimant was asked to interpret the proverb the grass is greener, he stated its greener, it grows better, it's a different area and spilled milk means don't worry. He did not know the similarities between a bush and tree. Differences between a bush and a tree were a bush is smaller. When asked what to do if a stamped addressed letter was found lying on the sidewalk, he said look at it and put it in a mailbox. When asked what to do he discovered a fire in a theater, he stated I would get out of there. He was diagnosed with adjustment disorder with mixed anxiety and depression, a herniated disc in lower back secondary to work-related accident, asthma, migraine headaches,

carpal tunnel syndrome, and his GAF was 41. His prognosis was guarded and should be engaged in individual counseling. (New Information)

A Medical Examination Report in the file dated [REDACTED] indicates that claimant was normal in all areas of examination except for musculoskeletally where he had some limitation of range of motion in the truck and left straight leg raising had less strength, and in the left hip and left ankle he has 4/5 strength. His height was 6' 1" tall and he weighed 173 pounds. His blood pressure was 118/78 and he was right-hand dominant. The clinical impression was that he was stable. He could occasionally lift 25 pounds and frequently lift 20 pounds or less. He could stand or walk at least two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. He could use his upper extremities for repetitive actions such as simple grasping, reaching, pushing/pulling, and fine manipulating. He had no mental limitations at that time. (pp. 1-2 of the Medical Reports)

A MRI conducted [REDACTED] of the lumbar spine stated that the impression was there was a prominent left para-sagittal focal disc protrusion at L5-S1, which results in impingement on the left S1 nerve root just as it exits the thecal sac. There was borderline central canal narrowing at the L4-L5 level due to a combination of factors as described above. There was a mild degree of neural foraminal narrowing in the lower lumbar spine region along with posterior element degenerative changes as described above in detail. (pp. 3-4 of the Medical Reports)

A [REDACTED] MRI of the brain indicated the midline sagittal T1 images demonstrate normal orientation of the posterior fossa contents. The cerebellum, fourth ventricle, and brainstem were normally oriented. There was normal fat signal in the clivus. The pituitary gland was unremarkable. The corpus callosum was normally formed. A review of the axial T2-

weighted images demonstrated no evidence of hydrocephalus or transependymal edema. There was normal flow void in the major intracranial arteries. The orbital contents were unremarkable. There was no evidence of significant inflammatory disease involving the paranasal sinuses or mastoid air cells. Diffusion-weighted sequences demonstrated no evidence of acute ischemic event. The axial fluid-attenuated inversion recovery sequences demonstrated no evidence of demyelinating process or chronic migraine disease. The axial T1 series demonstrated no evidence of hemorrhagic event. A significant neurologic abnormality was not demonstrated. (p. 6 of the Medical Reports)

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. The clinical impression is that claimant is stable. There is insufficient objective medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed or bipolar state. There is no Mental Residual Functional Capacity Assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person, and place during the hearing. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his prior work in security. A security job would not require strenuous physical exertion and there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant testified

on the record that he does have a driver's license and drives to his appointments every two weeks. Claimant does cook TV dinners, microwave dinners, sandwiches, and cereal. Claimant grocery shops every two weeks and he needs help carrying heavy items. Claimant is able to clean his home by light dusting, picking up, and doing dishes. Claimant lives alone in a house and he is single with no children under 18. Claimant does cut the grass with a riding lawnmower. Claimant testified that he can walk a 1/10 of a time, stand for 10 minutes at a time, and sit for 10 minutes at a time. Claimant testified that his showering and dressing would be slow, but that he could do it and that he can tie his shoes while he's sitting and touch his toes with his knees bend. Claimant testified that he can squat with pain and bend at the waist with pain, but cannot take a bath. Claimant testified the heaviest weight he can carry is 20 pounds and that he is right-handed and that he has carpal tunnel syndrome and has a hard time gripping things. Claimant testified that his level of pain on a scale from 1 to 10 without medication was a 9 and with medication is a 5. Claimant testified that in a typical day he wakes up, gathers his thoughts, sits on the bed for about 10 minutes and then takes his medications which make him dizzy and sleepy.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual

(age 45), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.07.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 3, 2009

Date Mailed: November 3, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

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